

THE LAW OFFICES OF
JOHN M. FITZGIBBONS
TAMPA THEATRE BUILDING
SUITE 700
707 NORTH FRANKLIN STREET
TAMPA, FLORIDA 33602-4441
(813) 221-8800
E-MAIL: fitzgibbons.law@verizon.net

JOHN M. FITZGIBBONS*
CRIMINAL LAW

OF COUNSEL
B. KAY KLEIN
CRIMINAL LAW

SARASOTA OFFICE
2750 RINGLING BOULEVARD
SUITE 4
SARASOTA, FLORIDA 34287
(941) 953-5697

August 1, 2013

Bob Buckhorn
Mayor
City of Tampa
Tampa City Hall
Tampa, Florida 33602

HAND-DELIVERY

Jane Castor
Chief of Police
Tampa Police Department
Tampa, Florida 33602

HAND-DELIVERY

Dear Mayor Buckhorn and Chief Castor:

Please be advised that I represent C. Philip Campbell, Jr. who was arrested for DUI on January 23, 2013 by officers of the DUI Unit of the Tampa Police Department.

On February 8, 2013, Governor Scott through Executive Order 13-29 appointed Bernie McCabe, State Attorney for the Sixth Judicial Circuit of Florida, to investigate and be responsible for all further matters involving the arrest of Mr. Campbell.

After an extensive investigation into the facts and circumstances of Mr. Campbell's arrest, State Attorney McCabe on Monday declined to pursue the prosecution of Mr. Campbell and dismissed the case. In reporting his findings to Governor Scott, State Attorney McCabe provided the Governor with a memorandum describing the investigation in detail and explaining why the case was dismissed.

In short, State Attorney McCabe's memorandum to the Governor was a blistering condemnation of the conduct of the police and

Mayor Bob Buckhorn
Chief Jane Castor
August 1, 2013
Page Two

lawyers involved in the arrest of Mr. Campbell, including the conduct of Sgt. Raymond Fernandez and Officer Timothy McGinnis of the DUI Unit of the Tampa Police Department. Specifically, State Attorney McCabe's memorandum, authored by Assistant State Attorney William Loughery, concluded that one of the reasons the case against Mr. Campbell was being dismissed was because "Sgt. Fernandez's and Ofc. McGinnis' credibility would become a significant issue which would be exploited by the defense."

Any reasonable person reading State Attorney McCabe's memorandum would also reach Mr. McCabe's conclusion, that the arrest of Mr. Campbell was the result of an improper "setup" involving what "appears to be a collaboration involving Personius, Adams, Diaco, Filthaut, Sgt. Fernandez and Ofc. McGinnis." Because of the close personal friendship of Sgt. Fernandez and attorney Adam Filthaut of the Adams & Diaco law firm, Sgt. Fernandez spent several hours staking out Mr. Campbell in the hours before the arrest. State Attorney McCabe's memorandum notes that "during this time period and shortly after Campbell's arrest, 92 text messages were exchanged between Filthaut and Sgt. Fernandez." The content of this astonishing number of texts is not known because Sgt. Fernandez a police officer for more than eighteen years, "accidentally erased his text messages the next day." "Accidentally" or deliberately?

This entire episode is scandalous, a disgrace and an embarrassment for the City of Tampa and the Tampa Police Department. It is an insult to the many honest and ethical police officers of the Tampa Police Department and an insult to honest and ethical lawyers.

Over six months have now passed since the arrest of Mr. Campbell. State Attorney McCabe's devastating report was issued three days ago. The question now, Mr. Mayor and Chief Castor, is what has the City of Tampa and the Tampa Police Department done in the past six months to address this scandal and what have you done in the three days since State Attorney McCabe presented his findings to the Governor and dismissed the case against Mr. Campbell?

The disturbing answer appears to be—virtually nothing at

Mayor Bob Buckhorn
Chief Jane Castor
August 1, 2013
Page Three

all. The only action which the Tampa Police Department appears to have taken was to "temporarily" move Sgt. Fernandez from his position as the DUI supervisor to another position, a non-disciplinary action.

The Tampa Police Department has recently stated publicly that it is waiting for the FBI investigation of the arrest of Mr. Campbell to be completed before acting. I suggest that this is merely an excuse to do nothing and to delay having to be accountable to the public by giving an official explanation as to why this scandal occurred. The FBI investigation has been ongoing for months now and there is nothing the Tampa Police Department can do now to adversely impact that investigation. Evidence has been gathered, witnesses have been interviewed so the investigation has clearly moved on past the Tampa Police Department. Furthermore, many of the issues with the DUI Unit which have arisen since the setup arrest of Mr. Campbell have absolutely nothing to do with a federal criminal investigation. For example, is there a "quota system" for DUI Unit officers requiring them to make a specified number of DUI arrests? Should all DUI Unit police cars have a dash camera to record every stop and arrest? When the DUI Unit wrongfully arrests a citizen, should there be an "un-arrest" policy to protect the innocent citizen wrongfully arrested?

Therefore, it appears to me that it is still business as usual with the DUI Unit of the Tampa Police Department, and has been since Mr. Campbell's arrest in January. It is equally apparent from State Attorney McCabe's report to the Governor that a complete and thorough investigation now needs to be conducted into ALL the policies, procedures, activities and practices of the DUI Unit of the Tampa Police Department.

Unfortunately, I do not believe the Tampa Police Department is capable of conducting this investigation in an independent and unbiased manner.

On January 25, 2013, the Tampa Bay Times quoted Chief Castor as follows: "It is unfortunate that the Tampa Police Department has been dragged into this circus. We stand behind our officer. He did what DUI officers do every day, and that is arrest impaired drivers." On January 28, 2013, the Tampa Bay Times quoted Tampa

Mayor Bob Buckhorn
Chief Jane Castor
August 1, 2013
Page Four

Police spokeswoman Laura McElroy as follows: "It is disheartening that he (Sergeant Fernandez) was a pawn in this situation." It is therefore obvious that officials in the Tampa Police Department have either already prejudged this case and therefore cannot impartially review it or they were not provided with complete and truthful facts at the time these statements were made, thereby making them witnesses in connection with any investigation.

Mr. Campbell's arrest is not the only recent controversial arrest involving the DUI Unit of the Tampa Police Department. I have read news accounts about the February DUI arrest of one Albert Fox, who I do not know. According to the police reports, Officer Dean Uno and, once again, Sgt. Fernandez of the DUI Unit were involved in the arrest of Mr. Fox. According to the Criminal Report Affidavit, Sergeant Fernandez said that he smelled the distinct odor of an alcoholic beverage on Mr. Fox, that his eyes were glassy and bloodshot and his speech was slurred. Police reports show that Mr. Fox shortly thereafter blew 0.000 twice on a Breathalyzer test and a urine test came back with negative findings for drugs by the Florida Department of Law Enforcement lab. The case against Mr. Fox was subsequently dismissed by the State Attorney's office because of insufficient evidence. It is quite apparent that an innocent citizen, Mr. Fox, was wrongfully arrested by the DUI Unit and taken to jail.

In view of these controversies involving the DUI Unit of the Tampa Police Department and the clear inability and reluctance of the Tampa Police Department to internally investigate these matters, I hereby request Mayor Buckhorn to immediately appoint a Special Independent Counsel to conduct a thorough and exhaustive investigation into the activities of the DUI Unit. This Special Independent Counsel should be a lawyer with no ties to the Tampa area, preferably a former Federal prosecutor experienced in corruption, civil rights and police procedures. The Mayor and the Chief should give the Special Independent Counsel complete and total power to investigate all aspects and activities of the DUI Unit. Within 120 days, the Special Independent Counsel should issue a report to Mayor Buckhorn and to the citizens of Tampa advising of his or her findings together with recommendations on how to improve the practices of the DUI Unit so that controversies like these do not occur again. Among the matters which should be

Mayor Bob Buckhorn
Chief Jane Castor
August 1, 2013
Page Five

addressed by the Special Independent Counsel are the following:

- All facts and circumstances concerning the arrest of Albert Fox.
- All facts and circumstances involving any other controversial DUI arrest brought to the attention of the Special Independent Counsel.
- A review of the transcript of the Formal Review Hearing conducted on February 27, 2013 at the State of Florida Department of Motor Vehicles, Bureau of Administrative Reviews. This hearing involved the status of Mr. Campbell's license following his arrest and Sergeant Raymond Fernandez and Officer Timothy McGinnis testified, the two DUI Unit officers directly involved in the arrest of Mr. Campbell. The Special Independent Counsel should determine if Sergeant Fernandez and Officer McGinnis displayed the professional conduct expected of all Tampa Police Officers or did their conduct and testimony fall below those standards.
- What is the Tampa Police Department's policy relating to police officers who have close personal friends and receive information from time to time from these close personal friends regarding alleged criminal conduct by a particular person? Should the officer do anything or refer the close personal friend to a supervisor? Should the officer determine if his close personal friend has an improper interest in the subject of the phone call being investigated or arrested? What should the officer or supervisors do to verify the information received from his close personal friend before acting upon it?
- In connection with the arrest of Mr. Campbell, State Attorney McCabe's memorandum indicates that after Sgt. Fernandez received a phone call from his close personal friend, attorney Adam Filthaut of Adams & Diaco, several police officers were involved in a stakeout for several hours while trying to locate and eventually arrest Mr. Campbell. Was this an appropriate use of the officers'

Mayor Bob Buckhorn
Chief Jane Castor
August 1, 2013
Page Six

time? Should a phone call from a close personal friend of an officer result in this type of "stakeout" activity by the police?

- The arrest of a citizen for DUI can be based purely on the subjective and uncorroborated statements of the arresting officer, such as an alleged odor of alcohol, alleged bloodshot eyes and alleged slurred speech. Should the Tampa Police Department adopt additional, non-subjective requirements before an officer arrests a citizen for DUI?
- In the case involving Mr. Fox, both the breath test and the urine test came back negative, yet Mr. Fox had been arrested and found it necessary to retain counsel. The arrest is still on his record. What is the policy of the Tampa Police Department in regard to "un-arresting" citizens who have been wrongfully arrested? If there is not such a policy, should the Tampa Police Department adopt such a policy when all objective data shows that the arresting officer was wrong in making the arrest? What responsibilities does the Tampa Police Department have to "clean the record" of a wrongfully arrested citizen?
- Sergeant Fernandez did not have a dash camera in his vehicle so some of his activities and observations leading up to the arrest of Mr. Campbell are unknown. Why do some police vehicles have dash cameras and some do not? Should the Tampa Police Department have a policy that all DUI officers, including supervisors, have dash cameras mounted in their car and should the dash cameras be operating at all times? Why didn't Sergeant Fernandez have a dash camera in his vehicle? Was there a nefarious reason not to have a dash camera in Sgt. Fernandez' vehicle, when video footage can often be strong evidence to support a stop and arrest?
- There have been numerous articles about awards given to Tampa DUI officers for doing such things as making the most DUI arrests in a year. In connection with this

Mayor Bob Buckhorn
Chief Jane Castor
August 1, 2013
Page Seven

recognition, have organizations or groups ever provided anything of value to the officer which might be construed as giving the officer an incentive to make DUI arrests to keep his or her arrest totals high, even when the evidence in a particular case may not support such an arrest?

• Does the Tampa Police Department DUI Unit have a "quota" for its officers to make a certain number of DUI arrests? Are officers in the DUI Unit being pressured by superiors to meet their quota or face adverse performance evaluations if they don't? If a DUI officer fails to meet a goal, such as make 150 DUI related arrests with at least 40% self initiated (rather than being called to the scene by another officer), does this failure to reach a goal or "quota" negatively impact that officer's performance evaluation? If yes, does this policy pressure or encourage a DUI officer to make unsubstantiated DUI arrests to reach his goal? A Tampa defense lawyer recently provided me with the personnel file of Officer Dean Uno of the DUI Unit. Comments by superiors contain troublesome language strongly suggesting that there is a "quota" for DUI Unit officers:

- 1) "MPO Uno did not accomplish any of his goals last year....he wasn't able to increase his DUI arrests by 10%." (2008)
- 2) "During this rating period Officer Uno made 163 DUI related arrests however, his self-initiated activity accounted for only 22% of those arrests." (2005)
- 3) "Goal #2. Make at least 150 DUI related arrests, with at least 40% self-initiated." (2005)
- 4) "Goal #3. Increase his self-initiated DUI arrests by 5%." (2012)
- 5) "Goal #1. To exceed 150 DUI arrests during this rating period." (2011)
- 6) "Goal #3. Equal or surpass last year's statistical

Mayor Bob Buckhorn
Chief Jane Castor
August 1, 2013
Page Eight

output." (2003)

7) "During this rating period Officer Uno made 163 DUI related arrests however, his self-initiated activity accounted for only 21% of those arrests." (2006)

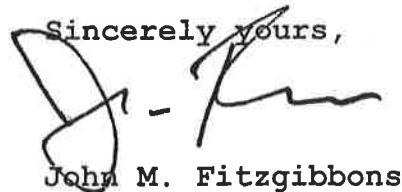
8) "Goal #1. Make at least 150 DUI related arrests, with at (sic) 30% being self-initiated." (2006)

- What is the policy on police officers on duty in the DUI Unit receiving "tips" or information on their personal cell phone from a close personal friend rather than having the close personal friend convey that information through official recorded police telephone lines so that there is a record of the call and the nature of the information?
- How many times in the past five years have officers in the DUI Unit made arrests based upon "tips" or "information" received from a close personal friend or from someone who has the personal cell number of the DUI officer?
- Sgt. Fernandez testified at the DMV Administrative Hearing that on "three or four times, five times" he had received calls from his close personal friend, attorney Adam Filthaut of the Adams & Diaco law firm, "about other people that drive drunk." How many investigations or arrests by Sgt. Fernandez or any other officer of the Tampa Police Department resulted from these calls to Sgt Fernandez from Mr. Filthaut? For each of these calls and contacts between Sgt. Fernandez and Mr. Filthaut, was the Adams & Diaco law firm involved in any litigation or controversies with the citizen who was the subject of the Sgt. Fernandez/Adam Filthaut calls?
- State Attorney McCabe's memorandum states the following in regard to Officer McGinnis: "Ofc. McGinnis refuses to allow Campbell to do the FST's he just asked him to do, explaining to Campbell that a court could see that as "coercion." Campbell, on his being put in the police

Mayor Bob Buckhorn
Chief Jane Castor
August 1, 2013
Page Nine

car, again begs to take the FST's and is again refused by Ofc. McGinnis. Why would Ofc. McGinnis deprive law enforcement from gathering evidence, either inculpatory or exculpatory? There is absolutely no legal basis to justify Ofc. McGinnis' "coercion policy." Does this so-called "coercion policy" exist at the Tampa Police Department? If so, what does it state? Was the setup arrest of Mr. Campbell such a "done deal" at the time of the vehicle stop that no matter what Mr. Campbell said or did with Officer McGinnis he was going to be arrested?

It is unfortunate that I must write this letter to request Mayor Buckhorn to appoint a Special Independent Counsel to investigate the DUI Unit of the Tampa Police Department. It is clear, however, from the now undisputed setup arrest of Mr. Campbell and the arrest of Mr. Fox that there are significant issues which need to be addressed in order to restore the public's confidence in the DUI Unit of the Tampa Police Department so such a scandal does not occur again.

Sincerely yours,

John M. Fitzgibbons